Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	CC Docket No. 96-45
Federal-State Joint Board on	)	
Universal Service	)	

Comments of the Wyoming Public Service Commission
on the Joint Board Recommended Decision
(December 20, 2002)

The Wyoming Public Service Commission (WPSC) hereby submits its comments in response to the Federal Communications Commission's (Commission)'s Public Notice DA 02-2976 in the above captioned matter, with respect to the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) as described therein. We are seriously concerned about the continuing lack of comparability between urban and rural rates and about the affordability of service in high cost areas. Therefore, our Comments will focus on issues of [i] urban-rural rate comparability and [ii] affordability of basic telephone service under the current and proposed support mechanisms.

The WPSC is clearly an interested party in this proceeding as the agency of the State of Wyoming that has jurisdiction to regulate intrastate telecommunications companies serving in Wyoming, and also as the statutorily named administrators of the Wyoming Universal Service Fund. In these roles, we have taken seriously our partnership with the Federal Communications Commission (Commission) to promote competition while working to keep rates affordable. We have commented many times on non-rural and rural universal service fund issues, have attended meetings with members of the Joint Board and the Commission, and have participated in the appeal of the *Ninth Report and Order.* Because Wyoming is a rural state, adequate universal service support is vital.

Our experience in Wyoming will be of value as the Commission again examines universal service funding, comparability and affordability issues, providing important real-world information on pricing in a rural state and on the development of competitively open markets. It bears directly on the universal service fund issues the Commission is examining in this proceeding. It also clearly illustrates the importance of having specific, predictable, and sufficient universal service funds.

In 1995, our legislature passed the Wyoming Telecommunications Act of 1995 (Wyoming Act). Its intent is to ensure that essential telecommunications service is available to the citizens of Wyoming while encouraging the development of new infrastructure, facilities, products and services. The Wyoming Act also provided for a transition from rate of return regulation of a monopolistic telecommunications industry to competitive markets while maintaining affordable essential telecommunications services through the transition period. Under the Wyoming Act, and consistent with the federal Telecommunications Act of 1996, Wyoming has[1]:

- Moved nearly all of the local exchange service prices in Wyoming, for both rural and non-rural carriers, to or above their total service long run incremental cost.
- Modified Qwest's[2] local pricing structure to better reflect the cost of service, providing for higher prices for less dense and longer loop areas.
- Increased Qwest's residential local service rates for its base rate areas (the most dense service areas) from $14.64 to $23.10.
- Increased Qwest's residential local service rate for its least dense service areas from $24.54 to $69.35 before universal service support.
- Reduced Qwest's business local service rate for its most dense service areas from $30.56 to $23.10, to better reflect the cost of the service and to remove implicit subsidies from prices.
- Reduced Qwest's intrastate switched access rate from 9.71¢ per minute to 1.4698¢ per minute, again better reflecting the cost of providing the service and eliminating implicit subsidies.

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1 See *The Pricing of Basic Telecommunications Service under the Wyoming Telecommunications Act of 1995*, dated December 2, 2002, available at http://psc.state.wy.us.

2 Qwest is Wyoming's only incumbent non-rural carrier, although Silver Star Telephone and Western Wireless are now reporting CLEC lines in Wyoming non-rural areas.

- Eliminated price regulation on intrastate toll services and watched retail prices drop by as much as 70%.

- Implemented a Wyoming universal service fund that supports local exchange services priced above 130% of the weighted statewide average rate, after recognition of federal universal service support. As of this writing, support is provided for services priced above $31.93 per month and the fund size is about $9.5 million per year.

- Instituted funding of Wyoming universal service support through an assessment on all intrastate services, including both wireless and wireline, with an explicit line item charge on customers' bills.

- Adopted Wyoming universal service rules that allow for wireless carriers to receive support from the fund rather than limiting the support only to wireline carriers.

- Implemented rules that require federal universal service funds to be passed on directly to customers in order to give customers the maximum direct benefit of the funds, with a recognition that 19% of Wyoming access lines receive support from the Wyoming fund.

- Adopted service quality rules for telecommunications carriers to assure the provision of adequate service during the transition to a competitive market.

- Performed two separate customer affordability studies – each of which showed that customers had great concern about price increases and their ability and willingness to pay the cost of telecommunications service, even recognizing the current support levels.[3]

In short, Wyoming has become a pro-competitive state that has removed the barriers to competitive entry – through pricing and the elimination of implicit subsidies. This was not done with the expectation that the federal fund would support any and all increases to local service that came along, but rather with the expectation of a state and federal partnership where each would contribute to maintaining just, reasonable, and affordable rates.[4] Even in view of all of this positive action, Wyoming customers are still paying some of the highest rates in the nation.[5]

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3 The 2001 Wyoming Telephone Affordability Survey, prepared February 15, 2001, found that 47% of the respondents believed that the value of their service was below average at a price of $25.00 to $34.99 while 60% of the respondents believed that the value of their service was below average at a price of more than $35.00.

4 The first universal service principle spelled out in the federal Act, at Section 254(b)(1), is that "Quality services should be available at just, reasonable, and affordable rates."

5 The GAO study, upon which the Joint Board relies heavily in its Recommended Decision, shows that there are few areas paying more than Wyoming, whether those areas are urban, suburban or rural.

Wyoming is characterized by small and widely geographically dispersed markets. These factors contribute significantly to the cost of service in the state. We are concerned that the federal fund should meet its support obligations to provide for [i] affordable rates and [ii] rural rates that are reasonably comparable to rates charged for similar services in urban areas.

As noted in the paragraphs 8 and 9 of the Recommended Decision, released on October 16, 2002, in this Docket, the United States Court of Appeals for the 10th Circuit concluded that the Commission, in its *Ninth Report and Order*, did not:

- Define adequately the key statutory terms "reasonably comparable" and "sufficient"
- Adequately explain setting the funding benchmark at 135% of the national average
- Provide inducements for state universal service mechanisms; or
- Explain how this funding mechanism will interact with other universal service programs.[6]

As further explained below, we are concerned that the Recommended Decision still does not adequately address the issues identified by the 10th Circuit. While the Recommended Decision spends time seeking to justify the earlier Commission decision on support levels and support thresholds, we believe that the explanations are incomplete and unpersuasive. We are in agreement with the joint comments of the Rural State Agencies[7] that the reasons given for recommending continuation of the 135% benchmark are flawed and that the Joint Board has still failed to answer the questions that arise about reasonable comparability.

In regard to reasonable comparability and sufficiency, the Joint Board recommends that "for purposes of non-rural high-cost support, sufficiency should be principally defined as enough support to enable states to achieve reasonable comparability of rates." The Recommended Decision, at paragraph 15, further states that "Sufficiency should be defined based on the

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Specifically, the study only shows two states with urban areas with higher rates than the identified Wyoming urban areas: Vermont and Michigan.

6 The Commission determined that it would not seek input from the Joint Board on this last issue at this time.

7 See the Joint Comments of the Montana Public Service Commission, the Montana Consumer Counsel, the Vermont Public Service Board, and the Vermont Department of Public Service.

relevant statutory goals under section 254(b)." Yet, the remainder of the Recommended Decision appears to ignore those specific and quite unambiguous universal service principles listed in Section 254 – the first of which is just, reasonable, and affordable rates and another of which is reasonably comparable rural and urban rates. Unfortunately, the reasonable comparability requirement is not defined in concept by the Commission but is only roughly identified through the use of a number (the support benchmark of 135% of the national average rate). Meanwhile, that number has become both the basis upon which the result will be judged and the result itself – a prime example of the circular logic that permeates the discussion of comparability and sufficiency, and severely damages its ability to produce a satisfactory result.

The WPSC agrees with Commissioners Copps, Martin, and Rowe, all of whom question the appropriateness of using the 135% benchmark.[8] In one portion of the discussion, the Joint Board explains that the 135% benchmark is warranted because the *national averages* of rural, suburban, and urban rates for residential customers diverge by less than two percent. Leaving aside the question of the appropriateness of the sample of the national averages contained in the GAO report relied upon, there seems to be little understanding or recognition of the urban, suburban, and rural areas selected and identified in Appendix IV: Local Telephone Rates. For instance, the two Wyoming cities shown in the sample are Cheyenne and Casper. For each of these areas, the rate is shown as $23.10. This fails to recognize that there are actually multiple rates for each of these exchanges – ranging from the $23.10 for the most densely populated portion of the areas up to $69.35 per month.[9] It is also interesting to note the populations of the selected examples of urban, rural, and suburban areas. The identified suburb of Evansville has a

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8 Commissioner Copps states: "I do not find adequate evidence in the record to demonstrate that a rural rate for telephone service that is 135 percent higher than the average urban rate in this country is necessarily or reasonably comparable." Commissioner Martin states that ". . . the decision sidesteps the question of whether the benchmark produces sufficient support in light of the existing disparity between national average cost and the lower average urban cost." Commissioner Rowe states that, "For these reasons, I conclude that the existing system, based on a benchmark of 135 percent, does not meet the requirements of the statute."

9 Prices listed are *before* taxes and surcharges, which generally add about an additional $10 to customers' basic service bills. These additives are not important for comparability purposes, but are a key factor when looking at affordability issues.

population of 1,538 while the non-MSA area of Gillette has a population of nearly 20,000, which is Wyoming's fourth largest city.

The WPSC also disagrees with a benchmark that is based on a national average, when measuring comparability of urban and rural rates. In this regard, we agree with the comments of the Rural State Agencies, as well as Commissioners Martin and Rowe. We think that Commission Martin articulates the concern succinctly when he states, "The national average costs are already higher than urban costs because they include in the national average the very rural areas at issue." We do not believe that one can find comparability between urban and rural rates through the use of nationwide or even statewide rates. In Wyoming, our statewide weighted average rate is $24.56. Yet, the individual rates, based on cost of service and current levels of federal support, range from a low of $10.50 per month to a high of $91.36. No one could fairly or reasonably assert that $10 and $91 are comparable simply because both are used to compute a statewide weighted average. How then could one believe that the $48.60 in Hudson, Wyoming, would be comparable to the urban rates in its communities of interest Billings (at $16.73 per month) or Salt Lake City (at $11.03 per month), simply because they are all part of a nationwide average?

The WPSC also fails to understand the Joint Board's confidence in the substitutability of rates and costs when looking at urban/rural comparability. The Recommended Decision states, at paragraph 39, that "We do not agree that an urban cost benchmark would better satisfy the statutory comparison of urban and rural rates. Like the current mechanism, the urban benchmark substitutes costs for rates." While conceptually we believe that costs can be used as a substitute for rates, we believe that substitution must be premised on a general agreement that rates are cost based. Wyoming's rates are cost based. However, such is not the case for many other states.

As the much quoted GAO report states, at page 15, "In 40 states where one or more local telephone companies have multiple geographic areas over which regulators average rates, 22 commissions report using value-of-service pricing to establish the relative rates for different geographic areas. Thus, local telephone rates in some states will be lower in rural and less populous areas, relative to rates in urban areas." Nowhere do we find where the Joint Board recognized, let alone adjusted for, the established fact of value-based pricing. Wyoming has cost-based rates. Many other states do not. To assume that costs and rates are similar on a ubiquitous basis nationwide is a serious flaw and it is an error that disadvantages Wyoming. When the Joint Board finds that rural, urban, and suburban rates are all currently comparable based on the current support method (and the method proposed to be continued), this similarity is based on pricing in which rates for rural areas that are clearly higher cost (based on the recognition that costs are driven by distance and density) are less than the rates for the lower cost areas. If rates in all jurisdictions became cost based, we are certain that the claimed comparability would no longer be sustainable.

We are also concerned about the Joint Board's suggestion that states be required to certify that the basic service rates in high-cost areas served by eligible telecommunications carriers within the state are reasonably comparable to a national rate benchmark. First, certification against a national rate benchmark is irrelevant when the statute calls for the reasonable comparability of urban and rural rates. One is completely different from the other. Second, we once again find the lack of definition of comparability troubling. What if Wyoming decided that the two levels were not comparable because they were a few dollars different while another state found them to be reasonably comparable with a difference of $5 or $10? The weakness of a system lacking this vital definition becomes more apparent. Third, we find the defined break point of high and low densities to be unrealistic and unusable. The Joint Board has suggested that wire centers with fewer than 540 lines per square mile are above the national average cost, while those with more than 540 lines per square mile are below the national average cost. In looking at currently reported data, Qwest's current Wyoming operations show a density of 8 customers per square mile. Even with cost differences obvious on their face, the Joint Board would still require the WPSC to make a case for being granted additional funding to recognize extraordinary high costs.

We have additional concerns about the Joint Board's proposal that states would have the option of submitting additional data to demonstrate that other factors affect the comparability of their rates and the state option of requesting additional federal action. We strongly agree with Commissioner Rowe and the Rural State Agencies that this proposal for filing for exceptional action is substantially undefined and provides no comfort to high cost states such as Wyoming. While the proposal, described in paragraph 50 of the Recommended Decision, allows a state to makes its case for special funding treatment, *nowhere* is that treatment, if any, described. It is not clear how much that state would receive for its non-rural carrier and customers. It does not describe what basis would be used to determine any special funds it would receive. This proposal fails on its face to show that its addition to the current process would then provide the comparability that has long been required by federal law and sought by Wyoming and other high cost states. It also fails the predictability test. Would the showing need to be made each and every year? Would there be a pot of money that would be prorated, with the exceptional amount subject to change each year? Maximum flexibility in the proposal, as described at paragraph 51 is not appropriate under the mandate for sufficient and predictable funding levels. It is tantamount to an abandonment of the attempt to satisfy the universal service funding mandates of the Act.

Finally, the WPSC is concerned that nothing in the proposal incents states to establish cost-based rates or competitive rates. In fact, the proposal seems to go in the opposite direction. As long as states continue to average their rates, they will limit the rate impact on their customers. As long as states continue to use value of service pricing, customers will not have to face affordability issues and there is no need to implement a state universal service program. As long as states continue to keep access rates high and business rates high, subsidized residential rates in urban and rural areas can be left lower. However, each of these actions ignores economic realities in the telecommunications industry and thus inhibits, rather than promotes, the development of local competition. It destroys the incentive for a state, especially a rural state like Wyoming, to move rates to cost to foster a competitive environment. It destroys the incentive for a state like Wyoming to implement a state universal fund, with its associated 4% surcharge on customer bills.

The policy and requirements on universal service support in the federal Telecommunications Act of 1996 are clear, but the Recommended Decision does not take reasonable steps to carry out those policies. As discussed above, we urge that the Commission not make the Recommended Decision the basis on which to go forward on universal service issues.

Respectfully submitted,

STEVE ELLENBECKER Chairman	STEVE FURTNEY Deputy Chair	KRISTIN H. LEE Commissioner

Certificate of Service regarding the
Comments of the Wyoming Public Service Commission
(Dated December 20, 2002)

I, Stephen G. Oxley, hereby certify that, on December 20, 2002, I served true and complete copies of the Comments of the Wyoming Public Service Commission on the Federal Communications Commission (Commission), as directed by the Commission's Public Notice in the above-captioned proceeding, by means of the Commission's ECFS system.

December 20, 2002

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